

Testimony of David Godbout, 15 Cardinal Rd., East Lyme, CT 06333

OPPOSED TO RHB 6746

Objective of RHB 6746: To increase the terms of Freedom of Information Commissioners' Term From Two (2) Years To Four (4) Years

Reasons for Opposition to Raised Bill

Introduction

Included in this testimony is a pamphlet that details evidence of the Freedom of Information Commission [FIC in this testimony] commissioners and employees that routinely ignore the provisions of our FOI Act.

CGS Chapter 14 [our FOIA Act] was created in the 1970's, like many other state's FOIA/Sunshine laws, in response to the Watergate incident. The goal of our act was to insure access to public records and meetings.

The FIC was also created at that time to insure enforcement of the FOI Act's provisions. Most other states do not have such a body. Some states do (although such a body is an alternative remedy to a lawsuit in court to appeal records denials) such as New York and Pennsylvania. In New York, in 2012, their equivalent of the FIC heard and decided 100% of their cases all within 30 days and in Pennsylvania, in 2012, their FIC equivalent heard and decided over two thousand cases (95% of their caseload) within 30 days. In both New York and Pennsylvania their FIC equivalent budget is at about one hundred thousand dollars a year compared to over two million dollar a year for our FIC, who has heard and decided zero (0%) cases within 30 days in any year of recent memory.

Connecticut Regulation 1-21j-29, a regulation of the FIC, mandates that the FIC strive to hear and decide cases within ninety (90) days; however, the FIC has heard and decided zero (0%) of any cases within this time requirement within recent history and certainly not with the past three (3) years and likely not within the past fifteen (15) years.

A simple examination of the most previous meeting of the FIC and its cases heard for a decision on 11 FEB 15 shows complaints that were filed two hundred and seventy (270) to three hundred days (300) prior to the hearing of a decision in that February meeting. Hardly the speed or efficiency that the FIC, through its executive director/general consul Colleen Murphy's testimony, has stated to this legislature before.

The goal of this testimony is to provide information to the committee members and public to show why I oppose the raised bill and to also suggest alternate legislation in lieu of the currently proposed legislation and particularly why I think that the proposed bill is going in the wrong direction as I believe that the best course of action is to eliminate the FIC in its entirety for the reasoning noted in this testimony.

Results of Audits & Other Information of the Effectiveness of the FOI Act in Respect to Obtaining Records

CGS Chapter 14 has two areas where an examination or audits of the performance and effectiveness have been performed and measured. One would be of the effectiveness of the Act's provisions in respect to citizens' request for records and the second is the performance and effectiveness of the FIC.

On the FIC main web page one can navigate to a publication of the FIC (clicking on: "FOI News and Resources" link and then "Publications" and then to the link of the publication "You Can Fight City Hall" or go to the currently working web page:

http://www.state.ct.us/foi/Articles/you_can_fight_city_hall.htm) titled "You Can Fight City Hall" that notes that compliance with records requests by citizens' are met by "offices do not

routinely comply with the requirements of the FOI Act... agencies failed the test of compliance miserably... Based on this survey, the criticism of government workers may be well-founded and reflects an accurate perception of how government employees treat the citizens of this state. In fact, it could be respectably argued that some employees of public agencies are barriers to carrying out good and efficient public service".

The state has routinely conducted surveys of compliance with the FOI Act in records request of public agencies in this state and they all come to the same conclusion, that I have found to be accurate: that compliance with the Act is terrible and agency employees do not treat requesters with respect.

One such experience of mine is of a request to the Governor asking for one or two pieces of paper of a public record from his office wherein the Governor's staff called my request "meddlesome" and in which the Governor through the request in the garbage without consideration. From my personal experience, 85% of requests filed by me are treated basically in the same manner; rarely do I get records at all and almost all requests have records deliberately delayed to the point of violating the promptness provisions of the FOI Act. And these include requests to the Department of Emergency Services and Public Protection and our Attorney General's offices-two agencies whose duty is to enforce laws.

It has been well established that agencies in this state in respect to complying with responses to requests for record has been well documented to be terrible.

Yet one of the goals of the Act and its creation of the FIC was to improve upon the horrible compliance of records requests of citizens to agencies. However, over time, no improvement has been shown. So the surveys in respect to compliance with records requests of agencies in this state is also a survey of the effectiveness of the FIC; after all, if the FIC was effective, the compliance with the Act's record provisions of agencies in this state would show improvement over time but we do not see that in the data that is available. The FIC may disagree but such disagreement would simply be opinion and not based on fact. Demand the FIC show data to support their claim.

In respect to directly measuring the FIC's performance and effectiveness, no state agency including the FIC itself, has made any effort to measure this metric. However, I have, I have contacted numerous people who have gone through the process of an appeal of a denial to records for agencies and compiled data relating to their experiences and their opinions of the performance and effectiveness of the FIC. This includes speaking directly to many individual citizens and attorneys who had cases before the FIC.

I am a PhD level scientist who has experience in conducting customer surveys in the private sector. I treated the litigants of FIC as FIC customers and proceeded to gather data in an impartial survey process. I also have a good deal of experience and have been a pro se litigant in many administrative proceedings, state court actions, state appellate court actions, and federal court actions. So while I am not a lawyer I am more familiar with judicial processes than most non-lawyers so I can take into account comments and opinions of litigants who were before the FIC and accord proper weight to their statements. So I will separate results of the survey to results of attorneys and results of citizens (pro se litigants). The survey included one hundred FIC cases being examined, and examined only complainant's opinions.

The venue of the FIC mainly includes complainants that represent themselves pro se, so the number of complainant attorneys contacted was a small number of five (5). Two refused to partake in the survey. Of the other three (3), two (2) thought that the process took too long and two (2) noted that the records sought did not have much value anymore to their clients due to the time period involved to get a case through the commission. All of the attorneys who participated have practiced law exclusively in this state and all after 1975.

Of the pro se citizen litigants who were willing to participate in the survey (included thirty three individuals), 75% complained that the process took too long, 25% had the impression that the commission unfairly treated them, and when asked if they desired a different method of hearing appeals of denials to records, 65% wished a different procedure. Many complained that the commission allowed evidence to be admitted from the opposing party but not from them by the commission. Some litigants did not bother to show up for hearings simply due to the fact that the records that they sought needed to be obtained quickly as

the records were requested for another need and this is also a common occurrence at the commission as noted in commission case files of many citizens simply not showing up for hearings and many can be attributed to this aspect of the inability of the FIC to hear cases in a prompt manner.

Overall, citizens thought that agencies were taking advantage of the current processes to delay in providing records or hoping that citizens simply would not appeal improper denials and the overall survey results indicate a less than satisfactory commentary on the FIC itself.

Shortly after the survey I filed a record request with the FIC asking for records that would demonstrate that the FIC is fulfilling its obligation under FIC Regulation 1-21j-29(a) that states: *"... the commission shall strive to hear each contested case within thirty (30) days after the commencement of the contested case and to decide each such case within sixty (60) days after the conclusion of the hearing therein..."*

The response of the FIC was succinct: no records exist.

And the Act mandates a one (1) year time period for the commission to decide cases but, from my experience, they cannot even make this time requirement as many cases (I have filed more than one FOIA request - which, as shown here, understandably resulted in a denials to access to records in a prompt manner by agencies) in which the FIC simply refused to decide cases in a year. And the FIC has made it policy not to hear any of my appeals any further, regardless of the cases obvious merits (many are cases where agencies simply do not even respond to requests) and the FIC's reason is simply that they are "too busy", an argument that Judge Cohn of the New Britain Superior Court has rejected in a November 2014 court decision where the court ordered the commission to hear cases that the FIC refused to hear because they were "too busy".

The agency has seven (7) staff attorneys that can hear cases and nine (9) commissioners that can also hear cases (and some commissioners do hear cases, I'll give credit where credit is due) but still make the claim that they are "too busy" to hear cases. The FIC has over a two million dollar budget and has plenty of resources that the legislature has provided and the FIC has not come to the legislature and asked for additional resources ~ so the claim

that they are "too busy: simply has no merit and its a claim that the courts have rejected as well.

And the FIC has simply ignored many cases before it, leaving citizens holding the bag; no appeal can be done if the FIC never decides a case within a year, the time limit noted in CGS Chapter 14 for the commission to hear and decide cases. And in respect to meeting complaints not heard within a year, the case is dead; one cannot re-file.

One such case where the FIC has refused to perform its duty under the Act is of the previous exemplified request to the Governor for public records he has; where the appeal noted that the Governor simply tossed the request in the garbage and the FIC's action of blessing this behavior via a refusal to even hear this case.

I have filed complaints at the FIC regarding its inability to hear and decide cases within a year, which in itself is a violation of the Act and is actionable. The result? The FIC simply refuses to hear the cases filed.

The performance and efficiency of the FIC rates a "F" by this citizen.

The legislature is akin to Nero watching Rome burn. Considering this bill while not addressing the production of an appeal process that meets the goal of the FOI Act is something that needs to be highlighted to this committee and legislature.

I don't believe that the Act could be "tweaked" or changed to get the Act's goals back on track. The FIC could also completely abolished in its entirety to achieve the goals of the Act, as further explained in this testimony's suggestions section.

As it stands today, the FIC is not meeting the Act's goals and changing the commissioner's term is not going to accomplish anything positive and may have negative consequences as explained further.

Foreword Of Open Meeting Requirements Contained In Our FOI Act

The open meetings requirements of the Act are required to be adhered to by members of any public agency in this state, like the FIC and even this committee. And these requirement "kick-in" even upon even 2 members of a multimember agency meet to discuss, debate, or deliberate matters of the business of the agency. The FIC has made such findings in the past and recently and these can be exemplified in FIC cases 2012-113 [link to decision: <http://www.ct.gov/foi/cwp/view.asp?a=4162&Q=519484>] and FIC Case 2008-164 [link to decision: <http://www.state.ct.us/foi/2009FD/20090129/FIC2008-164.htm>] among others. So the FIC and its employees are acutely aware of the requirements for open meetings required as contained in the FOI Act.

So, if two members of an agency meet (like a legislative committee, legislative commission, legislative taskforce or other public agency like the FIC) then the open meetings requirements of the Act apply; they must meet so that the public can know what the agency is doing (via allowing members of the public to watch and hear, meeting minutes may be required, and other requirements of the Act must be complied with).

Even members of this committee as well as other agencies and members of the legislature are subject to the FOI Act, as the members must be aware of and the exemption for caucuses to meet without need to comply with the Act are inapplicable to members of the General Assembly due to the requirements of our state constitution, Art. III, Section 16 that requires all debates of the General Assembly be conducted in public. Members of the General Assembly have a special obligation to insure that all their meetings are conducted in the public's gaze.

Of course this committee should be particularly aware of 2013 session's prior bill 1148 in which this committee considered and rejected allowing an exemption to the Act's meeting requirements for certain members of the General Assembly to meet. Of course, even if passed it would be in conflict with Art. III, Sec. 16 of our state constitution and such a statute would be immediately void of any meaning.

And statutes passed due to non-public meeting activities have been used as a defense by criminal defendant, and successfully so, as courts have reasoned that the manner in which laws are produced are as important as the laws themselves because of citizen's due process rights under the federal and state constitutions. Even our Supreme Court has noted in respect to secret meetings: "...neither the act nor our democracy can tolerate the conspiracy that occurred behind closed doors in the present case..." Judge Berdon, *Town of Windham v. FIC*, 249 Conn. 291.

Secret meetings are simply too highly offensive to be accepted in a free society.

Commission Today Violates Citizen's And Parties Due Process Rights of Parties Before It

The process for how the FIC should adjudicate cases before the FIC is straight forward and is outlined in the regulations that control the FIC. This process includes: a complaint being filed, an ombudsman being assigned to try to settle the case, a hearing officer is assigned (the commission could hear individual cases itself for a fact finding hearing but the FIC simply assigns a hearing officer to perform this part of the process), a hearing officer hold a hearing, the hearing officer produces a proposed decision, and the full commission hold a hearing to consider and make changes, if needed, to the hearing officer's proposed decision.

Under FIC Regulation Sec. 1-21j-20, ex parte communications are prohibited. This section also allows members of the FIC, even two, to meet to discuss matters before the FIC but this section also highlights that such meetings must be "*in conformity with the Freedom of Information Act*". This regulation allows hearing officers to communicate in "*routine communications*". I think the members of the committee would agree that re-litigating the case behind closed doors is not a "routine communication". A "routine communication" would include: asking someone to proofread, etc. Indeed This section also requires in subsection (c) that other communications, other than "routine", requires notice to the parties and an opportunity for "*all parties to participate in the communication*". While this regulation notes that the regulation does not preclude other ex parte communications, the law and

statutes contained within CGS Chapter 54 does as CGS Chapter 54, the Uniform Administrative Procedures Act, requires a fair hearing and this includes parties being involved in any type of meeting or proceeding that could effect the outcome of their case; as UAPA requires parties to be appraised of the arguments being made against their position. Our Supreme Court has ruled time and time again that parties in administrative cases have the opportunity to know and participate in gatherings that may effect their case. The FIC simply cannot have a meeting to discuss and deliberate a case in private without parties having the opportunity to participate. Indeed, the FOIA Act also requires that any such meeting be done in public. And this section of the FIC regulation does not authorize secret meetings and one has to only examine the UAPA and our FOIA Act and the numerous court decisions to understand that secret meeting like this are unacceptable in a free society.

What the commission currently does is when the hearing officer produces a proposed decision, that proposed decision is in actuality a "draft" and one that a hearing officer must defend upon command of the management of the FIC including the executive director that is the general consul for the FIC, acting as the full commission itself. FIC cases are thereby subject to a secret hearing in which parties are not noticed of the hearing, allowed to participate, not allowed to know the arguments made, and the public is not allowed to observe. If some case law is discussed and relied upon in these secret meetings, none of the parties involved know that the examination of a prior case or court decision is being used to make a final proposed decision.

The decision making process, that includes holding secret meetings to re-litigate and re-argue cases behind closed doors without parties being able to participate nor the public to view, is something that I would expect to be commonplace in North Korea, China, or Russia but not in the United States of America.

The FIC has Become The Freedom From Information Commission

The FIC has recently been deciding not to hear many cases and has argued in court that the FIC does not have to hear cases at all, that any case brought before it may simply never have any action taken upon it by the FIC.

This was an argument made to the New Britain Superior Court in a case filed before it in 2013. It is noted in the FIC's merit brief in the superior court case HBB-CV-13-5105870-S, filed in January 2014 in that case (see page 23 seq. of FIC merit brief). Indeed, the FIC has argued that the FIC does not have to do anything after a case is filed but can simply allow cases to collect dust.

Judge Cohn, in the 2013 case at New Britain Superior Court, rejected this argument in a case that sought an order from the court to order the FIC to hear complaints filed before it by a citizen. Judge Cohn has issued orders for the FIC to hear several cases which the FIC simply decided that they did not want hear.

And in seeking an order from the court to order the FIC to hear a cases that they decided not to hear, a citizen must incur thousands of dollars in expenses, none of which is recoverable to the citizen under current law. Seeking an order of the court to compel the FIC to hear a case is not an appeal whose costs are recoverable under UAPA and current law does not authorize recovery of even court fees to a citizen.

The FIC has refused to hear about 100 cases, many in respect to record denials wherein an agency did not even respond to the request for public records. Why? Well, according to the FIC, noted in their merit brief highlighted above, because they simply do not have to hear cases at all.

The FIC has not heard cases in hundreds of complaints in the past recent months.

It should be noted that courts have viewed a record request to a public agency to be performed by a person but really its a request of the public itself, just being acted upon by an individual. So when the FIC refuses to hear a case, it is refusing to allow access to public records from the public.

And the FIC continues not to schedule complaints on the basis of their viewpoint that they simply do not have to even after the court in New Britain rejected this argument. The FIC did not appeal this court's decision but simply chooses to ignore the court.

The FIC's viewpoint is that they do not have to hear cases and has no obligation to hold any hearings regarding any case that they do not wish to hear and simply allow cases to collect dust until their one year jurisdictional time period expires and, when that occurs, the case is a dead case.

The FIC has argued, and is currently operating under the argument, that they do not have to have any type of hearing for any case it does not wish to hear.

Then why even have this agency in existence let alone increasing the terms of its commissioners?

Violations of the FOIA Act By Members of The FIC and Its Employees

The pamphlet attached details some of the many violations of the FIC, its commissioners, and employees of the FIC in respect to our FOIA Act. The FIC is the enforcement body for the Act and it boggles the mind that members of that body and its employees so readily disgrace themselves in the violations of the Act noted in the pamphlet included below.

A newly discovered violation of the Act not included in the pamphlet records is that of the chairman of the FIC, who also serves as a member of the Governmental Accountability Commission (aka GAC) in which, during the GAC's last meeting of 13 JAN 15, Mr. Owen Eagan stated on the record in this meeting, that he has had numerous conversations with other members of the GAC committee in private regarding the business of GAC.

A complaint was filed before the FIC regarding this to explore if what Mr. Eagan stated was indeed fact or just a miscommunication or misspeaking of the GAC member. Of course, if members of the GAC committee are discussing and deliberating the business of the

committee via telephone calls, emails, etc. outside of the public gaze, this would be a violation of the FOI Act's open meeting requirements. Even the preamble of the FOIA passed in 1975 notes that a primary purpose is to insure that meetings are held in public.

Contained within the pamphlet are records obtained through our FOIA Act, emails and other records. These records highlight a myriad of secret meetings of the FIC and its commissioners and employees.

One set of records detail a host of secret meetings by the executive director, Colleen Murphy, who was a member of a task force created by the General Assembly to examine various subject matters including the FOIA Act's public right to know. And having secret meetings with other members of the committee in clandestine locations like KGB agents, including a diner far from the Capitol Building where the business of this state agency is supposed to be conducted.

Of course, I do not expect the FIC to actually hear the cases filed concerning these illegal meetings that violate the Act. I expect that the complaints pending now before the commission to simply collect dust and never be given a fact finding hearing.

The pamphlet and this testimony should make the fact that the FIC, several commissioners at least, and its management, simply believe that the FOI Act is a suggestion and not law as they seem to toss it aside at their convenience.

Conclusions and Suggestions to Committee and General Assembly

I would suggest changing the terms of commissioners of the FIC from two years to zero and simply eliminate the FIC all together as was proposed last legislative session.

To replace the appeal process to those of other states. Possibly allowing the agency that denies the ability to handle the appeal and then a de novo process at superior court wherein costs and fees and punitive penalties be allowed.

One thing is clear: the existence of the FIC has not improved compliance with the FOIA Act of public agencies in this state. Compliance with records requests still are terrible and this is a reflection of the FIC's inability to conduct its business to effect this result.

One member of this committee, Rep. Jutila, has been on the "winning?" end of a decision by the FIC not to hear a complaint against him in a record request appeal, where Rep. Jutila did not respond promptly to the record request of a citizen and did not produce the public records request. However, there is no doubt that Rep. Jutila supports the FOIA Act and has no objection to public records of his office being provided to the public. So who won this case? No one really. Rep Jutila lost his opportunity to explain why he did not provide the records requested, either by mistake or human error; and the public has been denied access to public records.

The FOIA Act does not limit the number of records requests that a citizen can file but does require such denials be adjudicated initially at the FIC. Yet the FIC is still continuing not to hear many cases, in defiance of a superior court decision to the contrary, of citizens in this state and has effectively blocked access to records and to insure that the open meeting requirements of the Act are adhered to by agencies in this state.

And agencies in this state have taken notice of the FIC's behavior of not hearing cases and have become even more that terrible in complying with record requests as even in the event a complaint is filed, the FIC may never even hear the complaint. So I have noticed that agencies are even more unlikely to comply with records requests. One can only need to use a little imagination to understand that the spiral created by the FIC may result in a complete refusal of agencies in the state refusing to comply with any record request.

And that there would be no relief under the FOIA Act as only decisions of the FIC are appealable, and the FIC has the view that they can simply allow cases to die on their shelves, leaving no relief at all to citizens and the public to obtain public records.

Additionally, under CGS Sec. 1-206, a petition to a court for an order to compel the FIC to hold a hearing in a case also requires a decision by the FIC. Yet the FIC has stated in court and operates under this viewpoint that the FIC need not reach any decision in any case.

And there are cases pending before the FIC of FIC cases that were not heard and decided within a year so this is not theory, but is an ongoing issue at the FIC.

Currently, the only action that this committee should take is to eliminate the FIC entirely.

Hence, the committee should not vote yea to the proposed bill pending before it today.

Additionally, the extension of the term limit of commissioners may be seen as a "reward" to commissioners but yet the testimony here and attachment shows that some commissioners and some FIC employees clearly do not warrant a reward at all.

Thank you for your time.

Submitted by :

David Godbout

Pamphlet Attachment to Testimony

"..Deliberations of public agencies must be done in view of the public, not behind closed doors.." Connecticut Supreme Court

Attachment Information - People & Note Concerning Records Attached

People noted in attachments include:

Victor Perpetua: FOI Commission lawyer/hearing officer. One of three FOI employees that review draft proposed decisions and makes changes to these upon the result of secret back-door meetings.

Mary Schwind: FOI Commission lawyer/managing director at FOI Commission. Also one that participates in secret meetings to decide the fate of FOI Commission cases and parties behind closed doors.

Colleen Murphy: FOI Commission general consul; also member of legislative task force noted

Owen Eagan: FOI Commissioner; a decider of cases who also participates in secret meetings

Amy LiVolsi: FOI Commissioner (no longer active); decider of cases involved in secret meetings

Clifton Leonhardt: FOI Commission lawyer/hearing officer.

James Smith, Don DeCesare, Garvin Ambrose, Bill Dunlap, Klarn DePalma, Colleen Murphy:
All members of legislative task force (subject to open meeting laws)

Note concerning records attached:

All records noted were obtained through the Freedom Of Information Act; since the review and public display of these records by the requestor to the general public the agencies that hold more records simply refuses to provide them to the public or requester.

The records attached are not all inclusive of records that evidence behavior that is believed to violate the FOI Act and its open meeting requirements but are a sampling that should provide some insight to the reader of the issues and evidence that supports the idea that the FOI Commission, some of its commissioners, and some of its employees simply disregard the law as noted.

As for due process issues associated with secret meetings the author will leave this examination up to the reader to consider. And as for the need to eliminate the FOI Commission, as the manner in which it operates offends the American ideas of justice, the author leaves this to be considered by the reader. Contact your state representatives and let them know your opinions on this agency. There are many members in the legislature that wishes this agency abolished for various reasons but they will not know your opinion unless you contact them. Let the legislature know how the behavior of this agency affects you.

There can be no due process if agencies handle their business, that is required by the FOI Act to be done in public, behind closed doors !

Records regarding FOIC cases provided are not part of the official records; the commission purposefully excluded these records to hide the various secret meetings held in reference to the cases.

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From: Perpetua, Victor
To: Schwind, Mary
Date: 5/22/2013 1:23:32 PM
Subject: RE: Owen Eagan Question

Training is always a good idea. As to language regarding future penalty, I don't feel strongly about it. Just trying to give them a heads-up. But I think it sends the wrong message to give them a warning, and then retract it. Implies that we won't consider repeat violations worthy of a civil penalty.

From: Schwind, Mary
Sent: Wednesday, May 22, 2013 12:09 PM
To: Perpetua, Victor
Subject: Owen Eagan Question

Victor,
Owen wanted to know if you think training should be ordered in 12-355? He will go with whatever you think. Also, he wondered if the language regarding a future penalty was something you felt strongly about. Please let me know.
Thanks,

Mary

Owen Eagan asking, through management [Mary Schwind, Managing Director @ FOI Comm.], for a change to a hearing officer's preliminary proposed decision in case 2012-355. Eagan is a commissioner and is engaged in a secret e-mail meeting

TO: Freedom of Information Commission
FROM: Thomas A. Hennick
RE: Minutes of the Commission's regular meeting of May 22, 2013

Docket #FIC 2012-355 Steven Ballok v. Director of Finance, Town of Monroe; and Town of Monroe

Meeting minutes note meeting of commission, 2pm meeting, regarding case 2012-355 on 22 MAY; after secret meeting

4. Forthwith, the respondents, or their designee, shall arrange for an FOI Act training session to be conducted by the staff of the FOI Commission. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

Section of Final decision includes training [was absent from initial proposed decision]-was result of secret deliberations occurring before public meeting

Proof that the commission holds secret meetings and that commissioners are involved with in these closed door meetings - they hold secret meetings regularly and the outcomes of cases are routinely deliberated and decided behind closed doors

From: Murphy, Colleen
To: Schwind, Mary
Date: 4/5/2013 1:06:28 PM
Subject: FW: James Torlai v. Department of Public Safety, FIC 2012-205
Attachments: HOR FIC 2012-205 Torlai v. DESPP - REVISED.docx

From: Perpetua, Victor
Sent: Thursday, April 04, 2013 4:27 PM
To: Eagan, Owen P; LiVolsi, Amy
Cc: Murphy, Colleen
Subject: James Torlai v. Department of Public Safety, FIC 2012-205

Owen, Amy, I've attached a copy of my revised hearing officer's report in this case. I truly appreciate the opportunity to review the recordings of the two hearings, take a second look at the evidence, and get this decision right. My thanks also to Colleen, who suggested that I reconsider the report. As your thoughtful questions at the meeting suggested, I believe the first hearing officer's report was not correct in failing to address the issue of erased records. As you will see, this necessitated a substantial revision of the report, and changes the outcome from dismissal to ordering disclosure. If you have any questions or comments, I would be pleased to hear from you. Victor

Eagan and LiVolsi are both commissioners.

The hearing officer is seeking approval of the report via email instead of in a public meeting and forum. And why send the draft to only two commissioners? There are nine.

The law is clear: all deliberations of a public agency must be done in public; not behind closed doors or e-mail secret meetings

From: Perpetua, Victor
Sent: Wednesday, May 22, 2013 11:13 AM
To: Murphy, Colleen
Subject: RE: Meet today

2012-414, *Salters v. DOC*. Note that HOR makes finding that delay in providing record was without reasonable grounds because FOI liaison in Cheshire was out on maternity leave and apparently no one was designated in her absence to receive or respond to complainant's request for records. No civil penalty ordered. DOC does not usually object to lack-of-promptness violations, but a finding of lack of reasonable grounds is a harsher conclusion. Not saying it's unwarranted, just raising the issue.

2012-337, *Cushman v. Simsbury Softball League*. Unremarkable conclusion that private softball league using town fields is not a public agency. However, worth noting that league never showed up to defend itself, only town, and it's not clear that the town had standing to defend the league (indeed, the fact that it actually did so suggests a closer relationship than the town admits to). I don't think this changes the result, but Cushman might make the same argument.

2012-543, *Lynette Jones v. Norwalk Tax Assessor*. Hearing Officer made finding, based on substantial evidence (invoice) that appraisal existed. Town seeks to deny that finding by a post-hearing affidavit that no appraisal exists. Although HOR orders affidavit on issue of whether certain minutes and correspondence exist, the order does not give the town permission to refute the finding that the appraisal itself exists. It would not be good procedure to permit a respondent to contradict facts post-hearing with a mere affidavit, not subject to cross examination. Remand for direct and cross examination of affiant might be appropriate.

2012-552, *Lucarelli v. Old Saybrook Ethics Commission*. This is a motion for reconsideration. The complainant has already filed an appeal in the superior court. I see no reason to grant this motion.

From: Murphy, Colleen
Sent: Wednesday, May 22, 2013 10:49 AM
To: Schwind, Mary; Perpetua, Victor
Subject: Meet today

Hello. I don't think I'll be able to meet today to review cases. Would you both review the meeting cases and let me know if you see any issues or red flags that need to be addressed? Thank you. Colleen

*Colleen M. Murphy
Executive Director and
General Counsel
State of Connecticut
Freedom of Information Commission*

An example of the nature of the secret meetings that the commission has behind closed door except that this meeting is electronic.

One can see the re-litigation and deliberations that go on in these secret meetings. Perpetua was not the hearing officer in any of these cases.

Murphy, Schwind, and Perpetua have routine meetings to review draft proposed decisions (with commissioners partaking too!) to re-litigate and demand changes be made to hearing officer reports. No litigant parties are welcome at these meetings where these people "re-hear" the case.

If you are a litigant in a pending case - this has happened to you !

From: Leonhardt, Clifton
To: Murphy, Colleen
Schwind, Mary
Perpetua, Victor
Date: 6/19/2013 12:15:30 PM
Subject: FOIC Meeting- June 26, 2013; Clif's Cases

Colleen, Mary and Victor,

I will be out of the office next week and will miss the Commission's consideration of two cases in which I served as the hearing officer (FIC 2012-635, New London Day v. Montville; FIC 2012-643, Dickman v. U.Conn. Health Center).

I read over Eileen Duggan's brief in opposition to my HOR in FIC 2012-635 and am not persuaded. In Permian, Occidental, like the Town of Montville in our case, had an agreement that allowed it to assert the attorney-client privilege against others. But the Court of Appeals held the agreement unenforceable, not allowing limited or selective waiver. In the "Shelley Nardozzi case", also cited by Eileen, the Court upheld our finding of waiver. While the facts were different from the present case, the decision does not preclude us from following Permian. I respect Eileen as a lawyer, who has worked constructively with me in settling other cases where I was the ombudsman. Everything she did in this case, where she was a central actor, was reasonable in the representation of her client. I just do not think she can disclose the relevant report to the dismissed employee and his attorney, and then still claim attorney-client privilege to thwart an FOIA request. See paragraph 25.

The Dickman HOR, I hope, speaks for itself. She could be advised to file complaints that are more clear and straightforward (ie., request attached, denial, hearing please).

I would be happy to discuss these HORs further if you wish to do so before the end of this week.

Clif

An example of a hearing officer, knowing he will be out of town and unavailable for the routine "draft proposed decision" review meeting with Murphy, Schwind, and Perpetua, and commissioners, seeing the need to defend his report.

Nothing in the law allows FOIC management and commissioners to re-hear cases behind closed doors ! The law states that when a hearing officer is assigned then he/she has the full authority of the full commission (i.e. hearing officer acts for the commission and has the commission's full authority). There is no lawful need for a hearing officer to defend his/her report during these secret meetings ! There should be no secret meetings at all.

From: Murphy, Colleen <COLEEN@STATE.CT.CONFIDENTIAL/00-FIRST ADMINISTRATIVE GROUP/CH-REC'D/HITS/CH-MU Date Time: 10/20/2011 4:38:19 PM>
To: Jim Smith <jsmith@connect.net>; Chris VanDelft <chris@ctcapitolgroup.com>;
Cc: Perlman, Paula
Box:
Subject: Tomorrow
Attachments: [image001.gif]

Would you guys want to meet up briefly before the Task Force meeting tomorrow? I'd like to hear about the CCFOI discussion from the other day and see if you have any thoughts before heading into the meeting. Plus, I know we are all just dying to have yet another meeting! If you are game, how about getting together at the cafeteria at 10:30? C

Colleen M. Murphy
Executive Director
General Counsel
State of Connecticut
Division of Information & Communications
SOD 360-3652

Task Force on Victim Privacy and the Public's Right to Know

Members Present: Rep. Angel Arce, Co-Chair; Don DeCesare, Co-Chair; Garvin Ambrose; Reuben F. Bradford; Sen. Eric Coleman; Klarn DePalma; William V. Dunlap; Sen. Leonard A. Fasano; Rep. Debra Lee Hovey; Kevin T. Kane; Jillian Knox; Brian Koonz; Jodie Mozder-Gil; Colleen Murphy; James Smith, Deborah DelPrete-Sullivan (attended as the substitute for Atty. Susan Storey) Andrew Woods

An example of how the FOI Commission's general consul, Colleen Murphy, while a member of the legislature's created Task Force of Victim Privacy and Public's Right to Know agency, not only participated in secret meetings but organized such meetings. Legislative task forces are legislative agencies that are subject to the open meeting requirements under our FOI Act.

Deliberations of such a task force must be done at an open meeting but we see here (one of many meetings as noted in the email "...yet another meeting..") a secret meeting being held at a cafeteria with reference to other secret meetings.

Even a meeting between two members of an agency requires openness under our FOIA open meeting law. Here we see a meeting between Jim Smith and Colleen Murphy (both members of the task force) scheming (and they had) a secret meeting to be held soon before a public meeting of the task force.

Murphy, being general consul of the FOI Commission is acutely aware that such a meeting violates the FOI Act; however, the very person heading the FOI Commission, a body created and commanded to defend the FOI Act, pays no heed to the Act, as if it is a suggestion rather than a law.

From: Murphy, Colleen </O=STATE OF CONNECTICUT/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MU> Date: Time: 11/13/2013 4:26:17 PM
To: Ambrose, Garvin G;
Cc:
Subject:
Attachments: image001.gif

Hello. Give me a call if you need to continue our discussion. My direct line is 860-256-3949, if you call after 5 and land in the general voicemail box. Colleen

Colleen A. Murphy
Executive Director and
General Counsel
State of Connecticut
Freedom of Information Commission
860-596-5482

From: Murphy, Colleen </O=STATE OF CONNECTICUT/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=MU> Date: Time: 11/12/2013 9:45:39 AM
To: 'Chris VanDeHoef' <chris@ctcapitolgroup.com>; jimjackysmith@comcast.net;
Cc:
Bcc:
Subject: RE: Arce
Attachments:

I have a meeting this morning with him at 10...will you be at the LOB, by any chance??

From: Chris VanDeHoef [mailto:chris@ctcapitolgroup.com]
Sent: Tuesday, November 12, 2013 9:03 AM
To: Murphy, Colleen; jimjackysmith@comcast.net
Subject: Arce

The Chairman wants to schedule a meeting with me...hmmm...

To: Murphy, Colleen
Cc: don@wliswmrd.net
Subject: FW: Sunset provision

Colleen,

Don asked me for my opinion on the scope of the sunset provision in section 3 of P.A. 13-331. The discussion inevitably got into the workings of the FOIA, and I thought you should take a look at it since you are way more familiar with FOIA. Would mind reading this correspondence (from the bottom up) and let us know whether you agree with me and/or have anything to add?

Thanks,

Bill Dunlap

Three more examples of secret meetings between Colleen Murphy and other member of the Task Force on Victim's Privacy and Public Right to Know. These issues should be discussed and deliberated in PUBLIC !

From: Daniel J. Klau [mailto:dklau@mdmc-law.com]

Sent: Monday, October 21, 2013 10:39 AM

To: 'jhsmythy@comcast.net'; Claude Albert; Chris VanDeHoef; Colleen Murphy; Mitchell Pearlman

Subject: RE: another huddle

10/28 works for me.

"Huddle" = meeting held in private between members of the Task Force on Victim's Privacy and Public Right to Know !

From: Murphy, Colleen </O=STATE OF CONNECTICUT/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ML> Date Time : 10/10/2013 10:03:51 AM
To: Dunlap, William Pref. <William.Dunlap@quinnipiac.edu>; <don@wlsymrd.net>;
Cc: Klau DePalma <KlaurDePalma@msb.com>; Jodie Mozdzier-Gil <jmozdzier@gmail.com>; Brian Koontz <bkoontz@ctpost.com>; Jim Smith <jhsmythy@comcast.net>;
Bcc:
Subject: RE: Conference Call
Attachments:

Hi everyone: I could do either, but Monday is better for me. If we do Friday, could we make it sometime after 10:00 a.m.?

A lot of thoughts are churning in my head after yesterday's public hearing.

Thanks, Colleen

Yet another meeting.

From: Murphy, Colleen </O=STATE OF CONNECTICUT/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=ML> Date Time : 8/8/2013 4:15:31 PM
To: <don@wlsymrd.net>;
Cc:
Bcc:
Subject: RE: Meeting Friday
Attachments:
Colleen.

I'm still good for a Friday meeting, as scheduled, at the Cromwell Diner
10:30 a.m.

Are you?

Don

Absolutely. I will see you there! Colleen

And a meeting held at a diner? Don = Don DeCesare.

From: Murphy, Colleen
To: Schwind, Mary
Perpetua, Victor
Date: 5/8/2013 10:33:38 AM
Subject: Meet on today's cases

From: Murphy, Colleen
To: Schwind, Mary
Perpetua, Victor
Date: 3/28/2013 10:11:46 AM
Subject: Meeting on cases

Can we meet around 11:45 a.m. to review the cases on for today's meeting?

colleen M. Murphy

Can we meet at 11:45 a.m. to go over the cases for the meeting? Thanks, C

colleen M. Murphy

From: Murphy, Colleen
To: Schwind, Mary
Perpetua, Victor
Date: 6/26/2013 10:33:40 AM
Subject: Meeting on cases today

From: Murphy, Colleen
To: Schwind, Mary
Perpetua, Victor
Date: 7/24/2013 10:17:16 AM
Subject: Meet on today's cases

How about meeting at 11:30 a.m. to review cases? Thanks, C

colleen M. Murphy

Hello. Can we meet at 11:30 to discuss the cases on today's agenda? Thanks, C

colleen M. Murphy

Just a few examples that show that the commission, its management and commissioners, hold meetings prior to the public meetings in which the commission notices to the public of the results of the secret deliberations.

All of the secret meetings were held directly before the public meetings on the aforementioned dates; public meetings occurred at 2pm with the secret meetings being held before the public meeting.

From: Murphy, Colleen
To: Schwind, Mary
Perpetua, Victor
Date: 7/10/2013 11:14:00 AM
Subject: Meeting on Cases

Hi, I've gone through the cases for today and did not see any major issues - several settlements, no shows, withdrawals. I'm thinking that we don't need to hold our usual meeting today. However, would you please review the cases as well and let me know if there is anything that stands out in your mind that might need addressing before the meeting.
Thanks, C

Colleen M. Murphy

This email shows that the secret meetings held before the open public meeting are a matter of routine; calling the meeting a "usual meeting".

These attachments are not the totality of the records that example improper activities by the commission and its employees. Anyone can request the records included in this pamphlet (and other records) from the FOI Commission; if you actually obtain records it is a question ~ the commission has been difficult to extract further records from and this can be attributed to their unwillingness to comply with the Act as evidenced in this pamphlet.